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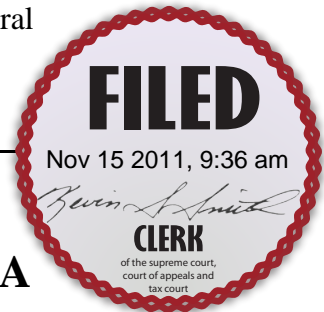
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**IN THE
COURT OF APPEALS OF INDIANA**



ROLAND DEVOE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-1104-CR-312

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robert R. Altice, Jr., Judge
Cause Nos. 49G02-1001-FA-6955 and 49G02-1010-FC-81353

November 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Roland Devoe challenges the trial court's decision to join two causes against him, one for child molesting and sexual deviate conduct and the other for invasion of privacy and for conspiracy to commit both forgery and obstruction of justice. The trial court granted the State's motion for joinder on the basis of a sufficient connection between the alleged child molesting and the conspiracy to send a letter purporting to be from a witness in the child molesting case asking for money in exchange for her agreement not to testify in the child molesting case.

Although Devoe objected to joinder at a pretrial hearing, he failed to renew his objection at trial. A jury found him guilty as charged, and he now appeals, claiming that the trial court erred in joining the two causes. Finding that Devoe has failed to preserve his claim for review, we affirm.

Facts and Procedural History

For several years, Devoe lived with a female friend, L.H. ("Mother"), and her daughter, C.H. During that time, Devoe and C.H. developed a close relationship, and Mother allowed Devoe to take C.H. on outings. In 2007, Devoe took eleven-year-old C.H. to the music studio where he worked and had intercourse with her. Over the next two years, Devoe had intercourse with C.H. on several occasions. In 2009, Devoe took C.H. to a hotel and had intercourse with her. In November 2009, C.H. reported the molestations to Mother, who notified police.

On January 28, 2010, the State filed an information, charging Devoe with class A felony child molesting and class B felony sexual misconduct with a minor. Devoe was arrested in Georgia and extradited to Indiana, where he was incarcerated in the Marion County jail. During his incarceration, he devised a plan to discredit Mother's testimony. The plan was for a recently released fellow inmate¹ to send a letter to Devoe's wife purporting to be from Mother, asking for money in exchange for her agreement not to testify against Devoe at the child molesting trial. On October 20, 2010, Devoe's wife presented the letter to police, and police investigated the letter as well as Devoe's phone conversations with his wife and the fellow inmate.

On October 24, 2010, the State filed a second information against Devoe, charging him with class C felony forgery, class C felony conspiracy to commit forgery, class D felony obstruction of justice, class D felony conspiracy to commit obstruction of justice, and class A misdemeanor invasion of privacy. On January 14, 2011, the State filed a motion for joinder of the two causes. Devoe objected to joinder at a pretrial hearing, but the trial court granted the State's motion. A jury trial ensued, and Devoe was convicted on all five charges presented to the jury.² At sentencing, the trial court merged the two conspiracy convictions. Devoe now appeals.

¹ The scheme also involved an attempt, via another forged letter, to obtain work release for the fellow inmate.

² The charges ultimately presented to the jury did not include the class C felony forgery count or the class D felony obstruction count.

Discussion and Decision

Devoe contends that the trial court erred in granting the State's motion for joinder of the conspiracy case with the child molesting case. As a procedural matter, we note that Devoe objected to joinder at the pretrial hearing but did not file a motion for severance. "Two or more offenses *may* be joined for trial if they are 'of the same or similar character' or if they are 'based on the same conduct or on a series of acts connected together or constituted parts of a single scheme or plan.' Ind. Code § 35-34-1-9(a)." *Lohmiller v. State*, 884 N.E.2d 903, 907 (Ind. Ct. App. 2008) (emphasis added). Where, as here, a defendant is not entitled to severance as a matter of right, the issues of joinder and severance will be reviewed for an abuse of discretion. *Heinzman v. State*, 895 N.E.2d 716, 721 (Ind. Ct. App. 2008), *trans. denied*. In making its determination, "the trial court must consider the number of offenses charged, the complexity of the evidence to be offered, and whether the trier of fact will be able to distinguish the evidence and apply the law intelligently as to each offense." *Id.*

Here, the trial court ruled on the State's motion for joinder at a February 2011 pretrial hearing, during which Devoe objected to joinder, claiming that the child molesting and conspiracy offenses were not sufficiently connected as required by Indiana Code Section 35-34-1-9(a). Notably, Devoe failed to renew his objection at trial. The failure to renew an objection to a trial court's ruling on a pretrial motion during the trial results in waiver of the error on appeal. *Brown v. State*, 929 N.E.2d 204, 207 (Ind. 2010). The purpose of requiring a contemporaneous objection at trial "is to allow the trial judge to consider the issue in light of any fresh developments and also to correct any errors." *Id.*

Once Devoe’s objection was overruled and joinder was granted, the proper procedure would have been for him to file a motion for severance. *See* Ind. Code § 35-34-1-12(a) (stating that a motion for severance must be made before trial or by the close of the evidence if based on a ground not previously known). If the defendant’s motion for severance is overruled, it “may be renewed on the same grounds before or at the close of all the evidence during trial. The right to severance of offenses ... is waived by failure to renew the motion.” Ind. Code § 35-34-1-12(b); *see also Lohmiller*, 884 N.E.2d at 908 (holding that defendant waived severance issue for appeal for failure to renew her motion for severance during trial). Because Devoe failed to file (let alone renew) a motion for severance, we conclude that he has waived his claim.³ Accordingly, we affirm.

Affirmed.

BAILEY, J., and MATHIAS, J., concur.

³ Devoe mentions the fundamental error exception to the contemporaneous objection rule for the first time in his reply brief. This he may not do. *See Curtis v. State*, 948 N.E.2d 1143, 1148 (Ind. 2011) (“[P]arties may not raise an issue, such as fundamental error, for the first time in a reply brief.”).